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7 CHARLES ANTHONY SPECK, et al.,
8 Plaintiffs,
9 v.
10 3M COMPANY, et al.,
11 Defendants.

Case No. 20-cv-05845-JD

ORDER RE MOTIONS TO DISMISS

Re: Dkt. Nos. 278, 279

12
13 Defendants General Dynamics Corporation and Bath Iron Works Corporation ask to
14 dismiss the remaining claims in the second amended complaint (SAC) brought by representatives
15 of the estate of John C. Speck. Dkt. Nos. 278, 279. The parties' familiarity with the record is
16 assumed, and the motions are granted in part. The requests for judicial notice, Dkt. Nos. 285 and
17 288, are terminated and were not considered for this order.

18 1. Negligence. Maritime law applies to the negligence claim. *See Jerome B. Grubart,*
19 *Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 534 (1995). The district courts in our
20 circuit and elsewhere have so concluded. *See, e.g., In re Toy Asbestos*, No. 19-CV-00325-HSG,
21 2021 WL 1930992, at *3 (N.D. Cal. May 13, 2021) (and cases cited therein); *Mack v. Gen. Elec.*
22 *Co.*, 896 F. Supp. 2d 333, 335 (E.D. Pa. 2012) (MDL). Plaintiffs have not presented a good
23 reason to conclude otherwise, and have referred to maritime law in the SAC. *See* Dkt. No. 260
24 (SAC) ¶¶ 3, 11 (alleging that that Speck was exposed to asbestos "at Mare Island Naval Shipyard
25 in Vallejo, California," and that defendants breached their duty "pursuant to state and maritime
26 law.").

27 The claim of general negligence, *see* SAC ¶ 11, will go forward. Defendants' own case
28 citation states that naval asbestos plaintiffs may sue "under a theory of negligence." *McIndoe v.*

1 *Huntington Ingalls Inc.*, 817 F.3d 1170, 1174 (9th Cir. 2016). Defendants’ suggestion that the
2 negligence claim “is nothing more than a recrafted first cause of action for strict product liability,”
3 Dkt. No. 278 at 7 and Dkt. No. 279 at 6, is not ground for dismissal because product liability
4 claims under maritime law may be “based both on negligence . . . and on strict liability.” *E. River*
5 *S.S. Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858, 865, (1986).

6 The negligent product liability claims underlying plaintiffs’ negligence cause of action,
7 SAC ¶¶ 12-15, will go forward only for products other than the naval ships and submarines
8 themselves, such as electrical and mechanical equipment on the vessels, “including switch gear,
9 circuit breakers, panel boards, motor starters, motor controllers . . . asbestos arc chutes, ebony
10 board, phenolic materials, paper, wire and cable[,] . . . pumps, valves, and turbines.” SAC ¶ 4.1.
11 Navy vessels, like the “ships constructed by Bath Iron Works” and the “ships and submarines”
12 constructed by General Dynamics, *id.*, are not “themselves ‘products’ under maritime law,”
13 *McIndoe*, 817 F.3d at 1174, so they cannot be the basis of a product liability claim. The systems
14 and components within the vessels are another matter. *See Air and Liquid Sys. Corp. v. DeVries*,
15 139 S.Ct. 986 (2019).

16 2. Fraud and Conspiracy to Defraud. Plaintiffs have not alleged these claims with the
17 requisite degree of particularity under Federal Rule of Civil Procedure 9(b), and they are
18 dismissed with leave to amend. “Rule 9(b) does not allow a complaint to merely lump multiple
19 defendants together.” *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir. 2007). Plaintiffs should,
20 “at a minimum, identify the role of each defendant in the alleged fraudulent scheme.” *Id.* at 765.
21 The SAC contains no specific allegations about General Dynamics and Bath Iron Works, in telling
22 contrast to the allegations about defendants Honeywell and Borg Warner. *See* Dkt. No. 260 ¶¶ 17-
23 18, 20-21, 23-24.

24 Plaintiffs may file a third amended complaint consistent with this order by February 24,
25 2022. A failure to meet this deadline will result in dismissal with prejudice under Rule 41(b).
26 Plaintiffs are advised that including multiple counts under a single cause of action, as the current
27 SAC does, is not consistent with a “short and plain statement of the claim” as mandated by
28 Federal Rule of Civil Procedure 8(a). Plaintiffs are also required to state their claims “in

1 numbered paragraphs, each limited as far as practicable to a single set of circumstances.” Fed. R.
2 Civ. P. 10(b). If defendants move to dismiss, they should file a joint brief to the fullest extent
3 possible, and avoid duplicative filings.

4 **IT IS SO ORDERED.**

5 Dated: February 3, 2022

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JAMES DONATO
United States District Judge

